

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0596**

State of Minnesota,
Respondent,

vs.

Tommy Junior McCall,
Appellant.

**Filed May 8, 2023
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-20-25843

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Appellant Tommy McCall's former stepdaughter reported to police that McCall repeatedly sexually abused her when she was between eight and sixteen years old. A jury found McCall guilty of first-degree criminal sexual conduct after hearing from the

stepdaughter and other witnesses. The district court sentenced McCall to 144 months in prison. We affirm McCall’s conviction and sentence over his challenges on appeal because the evidence was sufficient to support his conviction and because the district court did not abuse its discretion by sentencing McCall to the presumptive term of incarceration under the sentencing guidelines.

FACTS

An eighteen-year-old woman, whom we will call Heather to preserve her privacy, reported to police in September 2020 that appellant Tommy McCall sexually abused her before and during his marriage to her mother. Heather reported that the conduct started with McCall touching her buttocks and escalated to sexual penetration. She estimated that McCall abused her hundreds of times between 2010 and 2018. The state charged McCall with two counts of first-degree criminal sexual conduct, and the case proceeded to a jury trial.

Heather testified at trial about McCall’s conduct. She explained that, when she was eight and McCall first touched her buttocks, he called it “Level 1.” “Level 2,” according to Heather, happened when McCall digitally penetrated her. She stated that there were no more designated “levels,” but that McCall’s conduct escalated during the daily abuse, eventually leading to forced penile-vaginal intercourse. According to Heather, McCall would punish her for not wanting to “do what he wanted [her] to do” by taking away her electronics, forbidding her to go outside, and pulling her out of her track program. Heather described incidents that occurred in the same room as her baby brother. She testified that McCall’s penis was “distinctive” in appearance, “smaller and . . . dark and purple” in one

area and light in another. Heather said that she told no one about the abuse while it was occurring because she thought no one would believe her and because McCall, whom she knew possessed a gun, had threatened her.

The sexual abuse lasted eight years, until McCall and Heather's mother divorced. When Heather was eighteen years old and McCall no longer lived at the house, she told her mother and sister about the abuse. Heather telephoned McCall to confront him, and she reported the abuse to the police.

Heather's mother also testified. She said that McCall worked only part-time, placing him often at home with the children while she worked. She recalled that Heather and McCall had a difficult relationship and that Heather seemed happier after McCall moved out. She testified that McCall's penis "doesn't look like any other" she had seen and that it is "very distinct," having "two different colors." She said that she believed Heather's allegations after Heather accurately described McCall's genitals to her.

Heather's sister also testified about Heather and McCall's relationship, describing it as "an up-and-down roller coaster." Heather's sister described an incident when McCall wrote her (the sister) a note telling her that she was "sexy," which Heather had also recounted in her testimony. Two police officers described talking to Heather about the case, and one explained the prevalence of delayed disclosure of juvenile sexual abuse.

McCall testified, denying the allegations. He speculated that the allegations arose "[o]ut of anger." He had told police that he thought Heather's mother asked Heather to fabricate the allegations as revenge because of a custody dispute over their shared children. He also recounted that he had told police that Heather might have described his penis

accurately because she might have discovered and watched a DVD recording of him and her mother having sex. McCall's witnesses testified that Heather was angry as a child, loud, and liked to occupy the center of attention. McCall's sister said that she thought Heather and McCall acted normally with each other, and two mothers of McCall's other children testified that he was a good and involved parent.

The jury found McCall guilty of one of the charges of first-degree criminal sexual conduct and acquitted him of the other. McCall unsuccessfully moved for a new trial and a downward sentencing departure. The district court sentenced him to serve 96 months in prison and 48 months on supervised release, totaling 144 months—a sentence within the presumptive range under the sentencing guidelines.

McCall appeals his conviction and sentence.

DECISION

McCall argues that the state offered insufficient evidence to support his conviction because Heather's testimony required corroboration. He alternatively argues that the district court abused its discretion by denying his motion for a downward dispositional departure from the presumptive guidelines sentence. Neither argument prevails.

I

McCall argues that the state failed to prove him guilty of first-degree criminal sexual conduct. We review an evidence-sufficiency challenge by examining the record and determining whether the jury could have reasonably concluded that the defendant was guilty beyond a reasonable doubt based on the evidence and inferences drawn from it. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We consider the evidence in the light most

favorable to the verdict. *Id.* Our careful review of the record leads us to conclude that the jury reasonably found that McCall was guilty of first-degree criminal sexual conduct.

McCall questions whether Heather's testimony sufficiently supports his conviction. His argument focuses on Heather's credibility. He points to her delayed disclosure and to testimony asserting that she was an angry and disobedient child who hated McCall. He maintains that these credibility concerns trigger the need for Heather's testimony to be corroborated to support his conviction. A conviction may rest on the uncorroborated testimony of even a single credible witness, and the jury determines whether a witness is credible. Minn. Stat. § 609.347, subd. 1 (2022); *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). It is true that corroboration might become necessary if there are significant "reasons to question the victim's credibility." *Foreman*, 680 N.W.2d at 539. These reasons have arisen in circumstances unlike those involved here, such as a young, alleged child-abuse victim having been exposed to highly suggestive material by the state, an alleged robbery victim having engaged in inexplicable actions, and an alleged victim having seen the perpetrator for only a brief time and having identified the defendant during an erroneous lineup process. *See id.* (recounting circumstances).

By contrast to cases in which corroboration was necessary, this case involves the kind of circumstances not uncommonly decided by juries in single-witness credibility disputes. The jury received competing evidence and argument about how delayed disclosure might bear on a sex-offense claimant's credibility, and the jury was in the best position to balance that testimony and determine whether Heather's account was sufficiently credible. And McCall's assertions that Heather was angry and disobedient, if

believed, are not inconsistent with her testimony about his conduct. A jury could consider that Heather's allegedly negative attitude and behavior were consequences of McCall's abuse rather than reasons to question her allegations. The jury had other reasons to believe Heather's testimony. She described the sexual conduct in detail, and she had consistently recounted the abuse to at least four people, including her mother, her sister, and two law enforcement officers. Both she and her sister testified that her sister had received a note from McCall in which McCall complimented the teenage girl about how "sexy" she was. And Heather's mother confirmed that Heather had accurately described unique features of McCall's genitals. It is true, as McCall highlights, that the state produced no physical evidence of the abuse. But that sort of evidence is not always available, and it was not necessary for the jury to find McCall guilty. *See* Minn. Stat. § 609.347, subd. 1. Heather's testimony allowed the jury to reasonably conclude that McCall committed first-degree criminal sexual conduct. We affirm the conviction.

II

We turn to McCall's contention that the district court abused its discretion by denying his request for a dispositional sentencing departure. We afford great deference to the district court in sentencing decisions, and we review those decisions only for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). The district court did not abuse its discretion.

McCall argues that there were compelling reasons for the district court to depart and that the district court failed to consider the reasons supporting a departure. The sentencing guidelines designate the sentence that the district court must presume, a structure that

fosters sentence uniformity by allowing like offenders to be punished similarly for like offenses. *See id.* at 309. A sentencing court may—but is not required to—depart from a presumptive sentence only if it finds identifiable, substantial, and compelling circumstances to do so. Minn. Sent’g Guidelines 2.D (2010). Because the district court may depart only in extraordinary circumstances, not long after the guidelines became effective, the supreme court anticipated (as it turns out, accurately) that a sentence within the presumptive guidelines range would be reversed only in “rare” cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This is not one of those cases.

McCall failed to cite any substantial and compelling reason to depart. He identifies some mitigating circumstances, which he also raised in the district court. The district court may grant a dispositional-departure request because of a defendant’s particular amenability to probation, based on a defendant’s characteristics such as his “age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends . . . or family.” *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). McCall highlights his age, his cooperation during his pretrial release, the support of his family and friends, and his lack of prior criminal history. But our careful review of the record informs us that these were not compelling reasons to depart. This is especially so because the record also reveals other circumstances that opposed departing dispositionally, such as McCall’s refusing to take responsibility for the crime and impugning Heather’s credibility, even at sentencing. We are satisfied that the district court’s decision not to depart falls well within its discretion.

We similarly reject McCall’s contention that the district court failed to deliberately consider the reasons supporting a departure by not expressly denying his departure motion,

not substantively addressing the evidence supporting his motion, and not making a finding about his purported amenability to probation. We can readily infer that the district court exercised its discretion to deny the motion when it issued a presumptive sentence after expressly indicating that it had received McCall's motion and had reviewed his support letters and the other information he presented to support the motion. The district court also contemporaneously acknowledged the presentence investigation report and McCall's psychosexual evaluation, and it heard arguments from the parties about the departure motion, received the victim impact statements, and listened to McCall's presentence statement. The district court was not required to explain its reasons for refusing to depart from the presumptive sentence. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). And although the record must show that the district court deliberately considered the circumstances for and against departure, *see State v. Curtiss*, 353 N.W.2d 262, 263–64 (Minn. App. 1984), our review of the sentencing transcript convinces us that the district court did so. We conclude that the district court sentenced McCall within its discretion.

Affirmed.